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9 Attorneys for Plaintiff
 10 KAY POWELL

E-filing

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 12 UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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HRL

15 KAY POWELL,

16 Plaintiff,

17 v.

18 CHRIS' WHALE WATCHING
 19 TOURS, INC. and DOES 1 to 50,
 inclusive

20 Defendants.

CV 08 3929
 Case No.

COMPLAINT FOR PERSONAL INJURY;
 DEMAND FOR JURY TRIAL

Complaint Filed :
 Trial Date : None set

22 COMES NOW plaintiff KAY POWELL and alleges as follows:

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PARTIES

1. KAY POWELL is a resident and citizen of the United Kingdom.

2. Defendant CHRIS' WHALE WATCHING TOURS is, and was at all times herein mentioned, a business entity organized under the laws of the State of California, with its principal place of business in the County of Monterey, State of California.

JURISDICTION AND VENUE

3. KAY POWELL and Defendant are, respectively, citizens of a foreign state, the United Kingdom and of the United States, and claim is made for damages well in excess of Seventy-five Thousand Dollars (\$75,000). Jurisdiction is, therefore, proper before this Court pursuant to 28 U.S.C. §1332(a)(2) (alienage jurisdiction). Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant resides in the Northern District of California for venue purposes and the events at issue occurred in this District.

I.

FACTUAL BACKGROUND

4. This is an action for personal injuries to Ms. Powell as a result of the negligence of CHRIS' WHALE WATCHING TOURS. On or about January 20, 2006, Ms. Powell was a passenger aboard the STAR OF MONTEREY for a whale watching tour. As a result of the negligence of CHRIS' WHALE WATCHING TOURS, Ms. Powell suffered injuries to her lower back and coccyx after she was catapulted into the air and landed on a large bolt protruding from the wooden surface of the bench on which she was sitting ("the Incident"). The Incident was caused by acts and omissions of CHRIS' WHALE WATCHING TOURS, by and through its agents/employees, including, but not limited to, operating the vessel in adverse weather conditions and failing to properly maintain the vessel. Defendant also violated the law in its acts and omissions, and is also therefore liable for negligence per se.

5. As a result of the Incident, Ms. Powell required, and is reasonably expected to continue to require, medical care. Ms. Powell would show that nothing she did or failed to do on January 20, 2006, caused or in any way contributed to cause her injuries. To the contrary, the Incident

1 in which Ms. Powell was injured and the injuries she sustained in the Incident were proximately caused
 2 by the negligence on the part of CHRIS' WHALE WATCHING TOURS and its agents, servants and
 3 employees who were acting in the course and scope of their respective employment.

4 **II.**

5 **CAUSES OF ACTION**

6 6. Defendant's acts and omissions constitute negligence, in that Defendant (acting by its
 7 employees/agents) failed to exercise ordinary care, and the duty of ordinary care proximately caused
 8 personal injuries to Ms. Powell and the resulting legal damages of Ms. Powell.

9 **III.**

10 **DAMAGES**

11 7. The negligence of CHRIS' WHALE WATCHING TOURS caused Ms. Powell to sustain
 12 actual damages. Ms. Powell is entitled to be compensated for the personal injuries and damages
 13 Ms. Powell sustained. Ms. Powell has sustained physical pain and mental anguish and in reasonable
 14 probability will continue to suffer physical pain and mental anguish in the future. Ms. Powell has
 15 suffered and will continue to suffer physical impairment and disfigurement. Ms. Powell is reasonably
 16 expected to sustain a loss of earning capacity before the time of trial and a loss of future wage earning
 17 capacity. Because of the nature and severity of the injuries, Ms. Powell required medical treatment in
 18 the past and will, in reasonable probability, require additional medical treatment in the future. Charges
 19 for such medical treatment that have been made in the past and those which will in reasonable
 20 probability be made in the future have been and will be reasonable charges made necessary by the
 21 occurrence in question. As a result of Defendant's conduct, Ms. Powell has sustained damages in
 22 excess of the minimum jurisdictional limits of this Court.

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1 8. Ms. Powell is entitled under law to the recovery of prejudgment interest at the maximum
2 legal rate.

3 **PRAYER**

4 WHEREFORE, plaintiff prays for judgment against defendant CHRIS' WHALE WATCHING
5 TOURS as follows:

- 6 1. For actual damages according to proof;
7 2. For costs of suit herein incurred; and
8 3. For such other and further relief as the court deems just.

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10 DATED: June 26, 2008

Respectfully submitted,

JONES, CLIFFORD, JOHNSON & JOHNSON, LLP

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12
13 By Steger P. Johnson
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PRO HAC VICE MOTION PENDING

ATTORNEYS FOR KAY POWELL

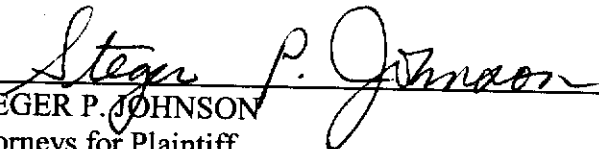
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: June 26, 2008

JONES, CLIFFORD, JOHNSON & JOHNSON, LLP

By


STEGER P. JOHNSON
Attorneys for Plaintiff
KAY POWELL

JONES, CLIFFORD, JOHNSON & JOHNSON, LLP
Attorneys at Law

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

KAY POWELL

DEFENDANTS

CHRIS' WHALE WATCHING TOURS

(b) County of Residence of First Listed Plaintiff UNITED KINGDOM
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant MONTEREY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

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Attorneys (If Known)

HRL ADR
E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	PRISONER PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	Habeas Corpus:	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 550 Civil Rights	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332(a)(2); 28 U.S.C. 1391

Brief description of cause:

Alienage jurisdiction

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ According to proof

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

JulY 24, 2008

SIGNATURE OF ATTORNEY OF RECORD

